

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JORDAN DAILY,)	
)	
Claimant,)	IC 04-010051
)	
v.)	
)	ORDER
JOHN DENTONE d/b/a CURBS 4 LESS,)	
)	Filed August 29, 2006
Employer,)	
Defendant.)	
_____)	

Pursuant to Idaho Code § 72-717, Referee Alan Taylor submitted the record in the above-entitled matter, together with his proposed findings of fact and conclusions of law to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendations of the Referee. The Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusions of law as its own. Additionally, the Commission finds an assessment of penalties pursuant to Idaho Code § 72-210 is appropriate. The Commission sets forth below its discussion and conclusion on the issue of penalties pursuant to Idaho Code § 72-210.

The file reflects that the parties held a telephone conference with a Commission Referee, in which they indicated their desire to reserve the issues of statutory penalty, attorney fees and costs under Idaho Code § 72-210 for a subsequent proceeding. The Referee in this case has respected those desires and avoided making any specific determination on those issues. However, the Commission determines that this specific statute requires the assessment of penalties, irrespective of the attempt by the parties to forego a determination of those issues.

The intent behind Idaho Code § 72-210 clearly indicates that the Legislature wanted to punish employers for failing to provide workers' compensation insurance for their employees. The language of this provision is mandatory in assessing the statutory penalties to uninsured employers, regardless of claimant's wishes. The fact that it results in a monetary benefit for a claimant is merely a consequence of that penalty. Once an injured worker makes a claim for compensation against an uninsured employer, it is the Commission's right and obligation to make the additional award against the uninsured employer pursuant to I.C. § 72-210.

The statute does not require the claimant to make a claim under I.C. § 72-210 in order to receive an award thereunder. Rather, the statute provides that the Commission "shall" award the 10 percent penalty in addition to the amount of compensation claimed by the claimant if it finds that the employer has failed to secure payment. Mortimer need only make a claim for compensation in order to be eligible for an award under I.C. § 72-210. Once that claim is made it is the Commission's right and obligation to make the additional award against an employer who has failed to secure payment, as Riviera failed to do. Riviera makes no contention that the Commission is barred from complying with the plain language of the statute.

Mortimer v. Riviera Apartments, 122 Idaho 839, 847-48, 840 P.2d 383, 391-92 (1992) (emphasis added).

Regardless of any strategy by claimants to waive an award of I.C. § 72-210 penalties, it is not a choice they can make. They can choose whether to pursue an uninsured employer if payment is not forthcoming, but the Commission is charged with ordering the penalty as part of the award.

The Supreme Court has interpreted Idaho Code §§ 72-210, 311-312 as follows:

Viewing these several provisions in pari materia, as we must, it is apparent that the legislature intended strict compliance with those provisions requiring the employer to obtain security for payment of the compensation to injured employees, and that it intended substantial penalties for non-compliance. I.C. § 72-210, the specific section invoked by the commission to impose the penalty in this case, is unambiguous. It requires no showing of bad faith or scienter as a prerequisite to the imposition of the 10% surcharge, costs or attorney fees. The commission did not err in concluding that an employer failing to secure payment of compensation as required by the act is

strictly liable for the statutory penalty.

Heese v. A & T Trucking, 102 Idaho 598, 600, 635 P.2d 962, 964 (1981).

For these reasons, the Commission finds that the imposition of penalties against this uninsured Employer is appropriate. As a result, Employer shall be responsible for a penalty of 10% in addition to all compensation awarded herein. Further, Employer shall be responsible for Claimant's attorney fees in the amount of 30% of all benefits awarded herein, as well as reasonable costs associated with prosecuting this claim. Claimant's attorney shall prepare the necessary itemization of benefits and costs no later than 20 days after the date of this order to assist the Commission in making a definitive award herein.

Based upon the foregoing reasons, IT IS HEREBY ORDERED That:

1. Claimant has proven he was a direct employee of John Dentone d/b/a Curbs 4 Less on August 10, 2004.
2. Claimant has proven he suffered an accident at work on August 10, 2004.
3. Claimant has proven he gave notice to Employer or that Employer had actual timely knowledge of Claimant's injury.
4. Claimant has proven that he is entitled to medical benefits.
5. Claimant has proven that he is entitled to temporary disability benefits from the time of his industrial accident through the time of hearing. Defendant is entitled to deduct from his obligations an amount equal to all of Claimant's earnings since August 10, 2004.
6. Claimant is entitled to attorney fees, costs, and a 10% penalty pursuant to Idaho Code § 72-210.
7. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all issues adjudicated.

ORDER - 3

DATED this __29th__ day of _August_____, 2006.

INDUSTRIAL COMMISSION

_____/s/_____
Thomas E. Limbaugh, Chairman

_____/s/_____
James F. Kile, Commissioner

_____/s/_____
R. D. Maynard, Commissioner

ATTEST:

_____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the __29th__ day of __August____, 2006, a true and correct copy of **Order** was served by regular United States Mail upon each of the following:

ERIC R SLOAN
THE ALASKAN CENTER
1020 MAIN ST STE 210
BOISE ID 83702

SHANE O BENGOCHEA
671 E RIVERPARK LN STE 130
BOISE ID 83706

st

____/s/_____